

In the Court of Appeals of the State of Alaska

State of Alaska,

Appellant,

v.

Kai D. Meyers,

Appellee.

Court of Appeals No. **A-13067**

Order

File Supplemental Briefs

Date of Order: **April 27, 2020**

Trial Court Case No. **3SW-17-01118 MO**

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

Kai D. Meyers was convicted of negligent driving, an infraction.¹ The State filed an appeal, challenging the magistrate’s authority to suspend the imposition of Meyers’s sentence.

Although the State asks us to opine on a question of statutory interpretation that will impact other traffic court cases, its brief is lacking in meaningful statutory analysis and any discussion of legislative history. We might be inclined to find the issue inadequately briefed, but recognize that if we agree with the State’s position, then Meyers has an illegal sentence that is outside the authority of the courts and can be corrected at any time.²

The State’s failure to adequately brief this case has led to significant additional work on the Court’s part. During the Court’s review, the Court began examining AS 12.80.040, a statute providing that “all laws of the state relating to misdemeanors apply to violations and infractions”:

¹ AS 28.35.410.

² Alaska R. Crim. P. 35(a).

AS 12.80.040. Violations and infractions

Except as provided in AS 11.81.900(b) and AS 28.90.010(d), all laws of the state relating to misdemeanors apply to violations and infractions, including the powers of peace officers, the jurisdiction of courts, and the periods for commencing actions and for bringing a case to trial.

On its face, the only misdemeanor laws that this statute appears to exempt from application to violations and infractions are those set out in AS 11.81.900(b) and AS 28.90.010(d) — statutes that preclude the imposition of imprisonment for violations and infractions, and eliminate the right to a jury trial and publicly appointed counsel for these offenses.³ Under this reading, the statute governing the suspended imposition of sentence, AS 12.55.085, would apply to violations and infractions.

But it is also possible to interpret AS 12.80.040 as applying only to the enforcement and procedural laws of misdemeanors — not the substantive penalty provisions. In *State v. Clayton*, the Alaska Supreme Court addressed the question of whether traffic infractions set out in Title 28 are criminal or civil in nature, for purposes of determining whether infractions should be subject to criminal process.⁴ The Court held that traffic infractions are quasi-criminal offenses and that the criminal procedures of enforcement, including bench warrants, applied.⁵

Two years later, the legislature enacted AS 12.80.040.⁶ The legislative commentary accompanying AS 12.80.040 appears to be much narrower than the plain language of the statute. In particular, the legislature wrote that AS 12.80.040 “allows

³ See AS 11.81.900(b)(67); AS 28.90.010(d).

⁴ *State v. Clayton*, 584 P.2d 1111, 1113 (Alaska 1978).

⁵ *Id.* at 1114.

⁶ SLA 1980, ch. 102, § 42.

peace officers to arrest a person for a violation or an infraction if the person refuses to identify himself or to accept a citation.”⁷ The commentary also stated that the revision to AS 12.80.040 should be read together with the corresponding amendment to AS 12.25.180, governing the use of citations in connection with violations.⁸

In *State v. Dutch Harbor Seafoods, Ltd.*, the Alaska Supreme Court recognized that the legislature had codified *Clayton* when it enacted AS 12.80.040.⁹ But the court also ascribed a broader meaning to its holding in *Clayton*, a holding more consistent with the plain language of AS 12.80.040: “*Clayton* recognized that, regardless of the legislative designation of such offenses as noncriminal, violations and infractions are minor criminal offenses in substance and are to be enforced and *adjudicated* using criminal procedures.”¹⁰

At least one amendment to Title 12, occurring after the legislature’s enactment of AS 12.80.040, suggests that the legislature did not intend for AS 12.80.040 to make the substantive sentencing laws of misdemeanors (particularly AS 12.55.085, the provision governing the suspended imposition of sentence) applicable to infractions. In 2008, the legislature amended AS 12.55.090(a). Previously, this statute authorized a court to impose probation only upon conviction for a “crime.”¹¹ In 2008, the legislature amended AS 12.55.090(a) to allow a court to impose probation “whether the

⁷ Commentary and Sectional Analysis for the 1980 Amendments to Alaska’s Revised Criminal Code, 1980 House Journal Supp. No. 79 (May 28), at 27.

⁸ *Id.*; *see also id.* at 23 (amending AS 12.25.180).

⁹ *State v. Dutch Harbor Seafoods, Ltd.*, 965 P.2d 738, 744 n.12 (Alaska 1998).

¹⁰ *Id.* at 746 (emphasis added); *see also State v. Euteneier*, 31 P.3d 111, 113 (Alaska App. 2001).

¹¹ Former AS 12.55.090(a) (2007).

offense under AS 11 or AS 16 or the crime is punishable by fine or imprisonment or both.”¹² Even though this amendment expanded the authorization for probation to violations under AS 11 and AS 16, it did not specifically authorize probation for an offense under AS 28 — seemingly a prerequisite for the use of a suspended imposition of sentence under AS 12.55.085.

Accordingly, **IT IS ORDERED:**

1. On or before **May 27, 2020**, the State shall file a supplemental brief addressing AS 12.80.040 and how it should be interpreted in relation to the question presented in this case. This brief shall be no more than 15 pages. The brief need not conform to the requirements of Alaska Appellate Rule 212, with the exception of subsections (c)(1)(A) and (I).

2. After the State files its supplemental brief, Meyers may, but is not required to, file a responsive brief within 30 days. Again, this brief shall be no longer than 15 pages, and it need not conform to the requirements of Alaska Appellate Rule 212, with the exception of subsections (c)(1)(A) and (I).

3. After we receive the parties’ supplemental briefs, we will resume our consideration of this case.

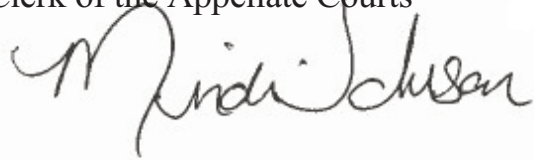
4. In their briefs, the parties should address the amendment to AS 12.55.090(a) that we mentioned above.

Entered at the direction of the Court.

¹² SLA 2008, ch. 75, § 22 (new language in italics).

State v. Meyers - p. 5
File No. A-13067
April 27, 2020

Clerk of the Appellate Courts

A handwritten signature in black ink, appearing to read "Mindi Johnson". The signature is fluid and cursive, with the first name "Mindi" and last name "Johnson" clearly distinguishable.

Mindi Johnson, Deputy Clerk

cc: Court of Appeals Judges
Distribution:

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